

Re SYED AHMED ALSAGOFF, DECD.

[O.C.J. (Ambrose J.) July 28, 1962]

[Singapore — Originating Summons No. 56 of 1962]

Estate duty — Incidence of estate duty to be paid on death of income beneficiaries — Whether estate duty to be borne by corpus of testator's estate or that portion of corpus which passes or is deemed to pass upon deaths of respective income beneficiaries — Meaning of "corpus of testator's estate" — Estate Duty Ordinance (Cap. 34) — Distinction between ss.6 and 7.

Section 7 of the Estate Duty Ordinance does not apply to an interest which passes on the death of the deceased for that is dealt with in section 6. Section 7(b) does not refer to the cesser of an interest in property which passes on the death of the deceased but to the cesser of an interest in property which does not pass.

Where the income of property is divided into shares which are settled on persons in succession, the death of any person entitled to a life interest in any one of such shares occasions an actual passing under section 6 of the Ordinance. Property which so passes is that proportion of the corpus out of which the life interest was payable and estate duty is payable on the proportion of the corpus which passes. *Christie v. Lord Advocate* (2) followed.

The words "the corpus of the estate" appearing in the last sentence of the judgment of Maugham J. in *Re Northcliffe* (3) mean "that portion of the residue out of which the income was payable". Adrian Clarke J.'s interpretation of these words in *Re Syed Hashim* (5) not followed.

An annuity charged on property is not, nor is it in any way equivalent to, an interest in a proportion of the capital of the property charged sufficient to produce its yearly amount: but a life interest in a share of the income of property is equivalent to, and indeed constitutes a life interest in the share of the capital corresponding to the share of income.

Cases referred to:—

- (1) *Cowley (Earl) v. Inland Revenue Commissioners* [1899] A.C. 198 at pp. 212 and 213.
- (2) *Christie v. Lord Advocate* [1936] 1 All E.R. 443.
- (3) *Re Northcliffe* [1929] 1 Ch. 327 at p. 335.
- (4) *Betts Brown's Trustees v. Whately Smith* [1914] S.C. 69, at p. 86.
- (5) *Re Syed Hashim* [1936] M.L.J. 245.
- (6) *Re Palmer* [1916] 2 Ch. 391.
- (7) *Re Duke of Norfolk's Will Trusts* [1950] 1 All E.R. 664 at pp. 675, 676.

ORIGINATING SUMMONS.

B. J. M. Dally for the applicants.

R. H. Green for those interested in contending that an order should be made in terms of prayers 1(i) and 2(i) of the originating summons.

C. H. Smith for those interested in contending that an order should be made in terms of prayers 1(ii) and 2(ii).

Cur. Adv. Vult.

Ambrose J.: This was an application by trustees of the will and estate of Syed Ahmed bin Abdulrahman Alsagoff, deceased, for the determination of certain questions arising in the administration of the estate and concerning the incidence of estate duty paid on the deaths of income beneficiaries.

The will was made on the 30th December, 1868, and the testator died on the 27th March,

A 1875. The relevant provisions of the will are these. The income from the testator's freehold and leasehold property is to be divided annually amongst the testator's wife and children and their descendants according to the shares prescribed by Mohammedan law. The income is to be so distributed during the lifetime of the last survivor of his children and more remote issue living at his death and for twenty years after the death of such survivor. And then the property is to be sold and the proceeds of sale are to be divided amongst the several persons then entitled to receive the income in proportions specified by Mohammedan law.

C I understand the testator's intention as to income to be this. The share of a male child is to be twice that of a female child. After the death of a child, the share payable to the child is to be payable to his or her children, a male child's share being twice that of a female child, and so on from generation to generation. If a descendant of the testator dies without children, then his or her share is to devolve upon other descendants of the same degree.

It is not disputed that the date of distribution of the corpus is the 28th May, 1961. It is to be borne in mind that the persons entitled to share in the corpus are the persons entitled to share in the income immediately before the date of distribution of the corpus.

E Estate duty has been paid under the Estate Duty Ordinance on the death of each of the income beneficiaries who died before the 28th May, 1961. By an order made by the Court on the 16th November, 1927, in Originating Summons No. 84 of 1920 the trustees were given leave to raise such estate duty in the manner suggested in the joint opinion of counsel referred to in the order. By a further order made by the Court on the 25th March, 1949, in Originating Summons No. 51 of 1949 the trustees were given leave to advance capital monies for the purpose of paying such estate duty. In the majority of cases, the trustees raised such estate duty by charging the share of the corpus passing on the death of the respective income beneficiaries by way of mortgage. The interest payable on all such mortgages and advances of capital monies made by the trustees was deducted from the income to which the successors of the respective deceased income beneficiaries became entitled before any distribution of income was made to such successors.

The main question to be decided by me was whether such estate duty is to be borne by

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- (1) the corpus of the testator's estate, or
 - (2) that portion of the corpus which passed or is deemed to have passed upon the deaths of the respective income beneficiaries.

The beneficiaries now entitled to share in the corpus of the estate are more than ninety in number. Mr. C. H. Smith represented benefi-

ciaries who support the first view. Mr. R. H. Green represented beneficiaries who support the second view.

Section 6 of the Estate Duty Ordinance provides

" . . . there shall be levied and paid upon the principal value . . . of all property settled or not settled which passes on the death of any person a duty, called 'estate duty . . .'"

Section 7(b) of the Ordinance provides :

"Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

.....

(b) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest;"

Section 6 of the Ordinance corresponds to section 1 of the Finance Act, 1894; and section 7(b) of the Ordinance corresponds to section 2(1) (b) of the Act.

As was stated by Lord Macnaghten in *Cowley (Earl) v. Inland Revenue Commissioners*,⁽¹⁾ at pp. 212 and 213, section 2 of the Finance Act, 1894, does not apply to an interest which passes on the death of the deceased, for that is already dealt with in section 1: and the provisions of section 2(1) (b) do not refer to the cesser of an interest in property which passes on the death of the deceased but to the cesser of an interest in property which does not pass. I take the view, therefore, that section 7 of the Estate Duty Ordinance does not apply to an interest which passes on the death of the deceased, for that is dealt with in section 6: and that section 7(b) of the Ordinance does not refer to the cesser of an interest in property which passes on the death of the deceased but to the cesser of an interest in property which does not pass.

It was held by the House of Lords in *Christie v. Lord Advocate*,⁽²⁾ that where the income of property is divided into shares which are settled on persons in succession, the death of any person entitled to a life interest in any one of such shares occasions an actual passing under section 1 of the Finance Act, 1894. It was further held that the property which so passed on the death of a person who was entitled to a life interest in one-tenth of the income of settled property was one-tenth of the capital value of the settled property; and that estate duty was payable on the property which passed.

In my judgment, therefore, on the death of each person entitled to a life interest in any share in the income of the testator's estate in the present case there was an actual passing of the corresponding share of capital under section 6 of the Ordinance. And the cesser of the life interest in the share of income must be regarded merely as the event which brought about such passing, and not as the cesser

A of an interest within the meaning of section 7(b) of the Ordinance.

Mr. Smith contended that the estate duty payable on the death of each of the income beneficiaries in the present case must be borne by the corpus of the testator's estate. He based his contention on the last sentence of the judgment of Maugham J. in *Re Northcliffe*,⁽³⁾ at page 335 :

"The result is that the duty in question must, I think, be borne out of the corpus of the estate."

In that case the income of the testator's residuary estate was divisible in fractional shares between a number of beneficiaries during their lives, with benefit of survivorship. According to the head-note, it was held :

"(1) that the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, and that estate duty must be paid on the value of such share, and

D (2) that the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, and must be borne by the corpus of such estate."

It seems to me obvious from the judgment of Maugham J. that the words "the corpus of the estate" which appear in the sentence cited from his judgment mean "that portion of the residue out of which the income was payable." I am fortified in this view by the following passage from the judgment of Lord Mackay in *Betts Brown's Trustees v. Whately Smith*,⁽⁴⁾ at page 36 :

"In *re Northcliffe* is the only other case calling for any observation. . . . The words of the judge are few, and one is not surprised that they were read in what I think to be an erroneous sense. These words were the last sentence, reading as follows:— 'The result is that the duty in question must, I think, be borne out of the corpus of the estate.' In applying that to the present case, the supposition was that the corpus spoken about would be the whole residue or at least the whole residual income. But it is perfectly clear from the context that the reporters in their head-note are right when they give the result in these terms:— 'And (2) that the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, and must be borne by the corpus of such estate.' . . . the word 'such' does not appear in the speech as reported, but it is obvious from the context that that was the judge's real conclusion."

If, however, I am wrong in my interpretation of the words used by Maugham J. and he meant by those words "the corpus of the testator's residuary estate", I think that on the facts of the case before him it would not make any difference to anybody, if the estate duty was in fact borne by the corpus of the testator's residuary estate, because, on the death of an income beneficiary, his or her share accrued to all the other income beneficiaries equally, and also because under clause 10 of the will after the trusts of income had come to an end the residue was to be held upon trust for certain charities.

But on the facts of the case before me it does not seem proper to me that the estate duty payable on the death of an income beneficiary should be borne by the corpus of the testator's residuary estate as a whole, as, where property actually passes, estate duty is a tax upon the property which passes, and diminishes that property and no other property. Authority for this view is to be found in the judgment of Lord Mackay in *Betts Brown's Trustees v. Whately Smith* at page 83 of the report cited above.

In my view, the facts in the present case are more similar to the facts in that case than to the facts in the *Northcliffe* case. In that case a fund was held on trust for several life tenants, each being entitled to the income of a fractional share during his or her life. Upon the death of one of the life tenants, estate duty became payable in respect of the fractional share of which she had enjoyed the income, and which passed to her daughter for a life interest with a contingent future interest in the corpus. The trustees, being accountable to the Crown for the duty, paid it out of the whole fund. It was held that the burden of the duty fell only on the fractional share upon which it was assessed, and that it was payable out of the capital of that share, leaving the successor in possession to bear the annual charge representing interest on the duty.

I must now consider the case of *Re Syed Hashim bin Kassim*,⁽⁵⁾ which was cited by Mr. Smith in support of his contention. The facts in that case were these. A testator gave property to his trustees and directed them to distribute the income during a certain period among certain beneficiaries in certain shares. Upon the death of an income beneficiary his share was to be redistributed among certain others of the beneficiaries. Upon the arrival of the date of distribution the property was to be converted into money and distributed as provided by the testator. Two of the income beneficiaries died. Estate duty was claimed and paid. It was held that estate duty should be deducted from that portion of the capital of the whole estate which was deemed to have passed upon the cesser of the respective life interests.

Here I must pause to make the observation, in the light of what was decided by the House of Lords in *Christie v. Lord Advocate*, that there was an actual passing of a portion of the capital under section 6 of the Ordinance upon the death of an income beneficiary and not a deemed passing under section 7(b).

Mr. Smith relied on the following passage from the judgment of Adrian Clark J. at page 247 :

"Eventually the cumulative effect of successive payments of estate duty as successive lives fall in will be borne by the residuary beneficiaries."

It seems to me that this passage is founded on the last sentence in the judgment of Maugham J. in the *Northcliffe* case :

A "The result is that the duty in question must, I think, be borne out of the corpus of the estate."

I have already expressed my views on the meaning of this sentence. If by the words "the corpus of the estate" Maugham J. meant "that portion of the residue out of which the income was payable" then, with all due respect to Adrian Clark J., it would appear that he misunderstood the meaning of those words. If, however, by those words Maugham J. meant "the corpus of the testator's residuary estate", as I have already pointed out, the payment of the estate duty out of the testator's residuary estate would not, on the facts of the *Northcliffe* case, make any difference to anybody. It is to be noted that in the *Northcliffe* case upon the death of an income beneficiary his or her share was to be redistributed among all other income beneficiaries equally, but in the *Syed Hashim* case the share was to be redistributed among certain others of the beneficiaries. It seems doubtful to me, therefore, if what Adrian Clark J. said was right in the circumstances of the case before him. Another fact which would have to be taken into consideration is the provision for ultimate distribution of the corpus. Unfortunately, this is not set out in the judgment of Adrian Clark J. In any event, I think what Adrian Clark J. said conflicts with the decision in *Betts Brown's Trustees v. Whately Smith*, which I prefer to follow.

The next case relied on by Mr. Smith was *Re Palmer*,⁽⁶⁾. In that case the testator gave his residue in trust to pay out of the income an annuity of £3,000 to R and, on R's death, an annuity of £3,000 to E. It was held that the estate duty chargeable on R's death in respect of the slice of residue required to produce his annuity must be borne by the residue as a whole and not by the slice, as the slice was purely fictitious or notional.

It must be stated here that in *Betts Brown's Trustees v. Whately Smith*, Lord Mackay refused to follow *Re Palmer* on the ground that that case was a case of deemed passing of a fictional slice of property under section 2(1)(b) of the Finance Act, 1894, whereas he had to deal with a case of actual passing of property under section 1.

In my opinion, an annuity charged on property is not, nor is it in any way equivalent to, an interest in a proportion of the capital of the property charged sufficient to produce its yearly amount: but a life interest in a share of the income of property is equivalent to, and indeed constitutes a life interest in the share of the capital corresponding to the share of income. This distinction is elucidated by Jenkins L.J. in *Re Duke of Norfolk's Will Trusts*,⁽⁷⁾ at pp. 675, 676. In the case of the cesser of R's annuity in *Re Palmer* under section 2(1)(b) of the Finance Act, 1894, the notional sum only came into existence when it became necessary to ascertain under section 7(7)(b) of the Act the amount by which the whole residuary estate had benefited

by the cesser. In the case before me I am not concerned with a deemed passing of a fictitious slice of property under section 7(b) of the Estate Duty Ordinance but an actual passing of property under section 6. I, therefore, think that *Re Palmer* is not in point.

I come now to Mr. Smith's contention that effect must be given to the testator's intention. By his will the testator directs the trustees to sell his freehold and leasehold property at the date of distribution and to divide the proceeds of sale amongst the several persons then entitled to receive the income in proportions specified by Mohamedan law. Mr. Smith contended that, as there was no provision for payment of estate duty in 1875, the testator could not have contemplated that estate duty would be payable upon the deaths of income beneficiaries; and that, therefore, such estate duty must be paid out of the corpus of the testator's estate and the balance of the corpus divided as directed by the testator. As I have already stated, where property actually passes on the death of any person, estate duty is a tax upon the property which passes and diminishes that property and no other property. It is true that the normal incidence of estate duty may be altered by the direction of the testator. But in the present case it is clear that the testator has not altered the incidence of estate duty, as he could not and did not foresee that estate duty would have to be paid on the deaths of income beneficiaries. In my opinion, it was the testator's intention that the proportions in which the income beneficiaries were to take the corpus of his estate at the date of distribution should be the proportions in which they shared the income. Effect is given to this intention by not interfering with the incidence of estate duty payable upon the deaths of income beneficiaries.

It was for the above reasons that I decided that the estate duty paid under the Estate Duty Ordinance on the death of each of the income beneficiaries who died before the 28th May, 1961, should be borne by that portion of the corpus of the testator's estate which passed upon the deaths of the respective income beneficiaries.

Another question I had to decide was whether the interest charged after the 28th May 1961 in respect of unpaid estate duty, or interest charged after that date on mortgages made for the purpose of paying estate duty on the deaths prior to that date of income beneficiaries, should be borne by the corpus of the testator's estate or that portion of the corpus which passed or is deemed to have passed upon the deaths of the respective income beneficiaries. In view of my decision as to the incidence of estate duty paid on the death of each of the income beneficiaries who died before the 28th May 1961, I decided that such interest should be borne by that portion of the corpus which passed upon the deaths of the respective income beneficiaries.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Brad-dell Bros.; Laycock & Ong.*

A PUBLIC PROSECUTOR v. LIM TEIK HENG

[A. Cr. J. (Hepworth J.) August 3, 1962]

[Penang — Case Stated No. 1 of 1962]

Merchant Shipping — Alteration of "load line mark" — Merchant Shipping Ordinance, 1952, s.313(b) — Whether excludes mens rea.

B *Criminal Law and Procedure — Mens rea — Whether s.313(b), Merchant Shipping Ordinance, 1952, excludes by implication — Case stated under s.317, Criminal Procedure Code (Cap. 21).*

C The accused was convicted in the Magistrate's Court at Penang as the registered owner of a boat of altering the load line mark on the said boat, an offence punishable under section 313(b) of the Merchant Shipping Ordinance, 1952 and was sentenced to a fine of \$450. The learned Magistrate, however, considered that an important point of law affecting the public interest required decision and remitted the matter to the High Court under the provision of section 317 of the Criminal Procedure Code. The question for the opinion of the High Court was whether the legislature has by virtue of the wording of section 313(b) of the said Ordinance necessary implication excluded *mens rea*.

D **Held:** (1) the legislature has not by the wording of section 313(b) of the Ordinance excluded *mens rea* by necessary implication;

(2) in this case it was not proved at the hearing where, when and by whom the load line of the boat had been so altered and there was no finding of fact by the learned Magistrate on these points. As no *actus reus* had been proved the question of exclusion of *mens rea* by necessary implication did not arise;

E (3) where a case is stated under section 317 of the Criminal Procedure Code the case should set out the facts found by the Magistrate upon the evidence and not the evidence itself. The Court accepts these facts as conclusive and if the only issue is one of fact the Court will not entertain the case stated. Questions of law alone are considered;

F (4) the conviction and sentence must therefore be quashed.

Cases referred to:—

(1) *Public Prosecutor v. Sundram* [1955] M.L.J. 159.

(2) *R. v. Yeomans* (1860), 24 J.P. 149.

CASE STATED.

G *Wan Suleiman bin Pawan Teh* (Deputy Public Prosecutor) for the Public Prosecutor.

Eusoffe Abdoolcader for the accused.

Cur. Adv. Vult.

H **Hepworth J.:** In Magistrate's Court Case No. 769 of 1962 in the Magistrate's Court at George Town, Penang, the accused was convicted as the registered owner of mv. "Lam Liany 24" of altering the load line mark on the said ship, an offence under section 313(b) of the Merchant Shipping Ordinance, 1952, and was sentenced to a fine of \$450. The learned Magistrate, however, considering that an important point of law affecting the public interest requires decision, has remitted the matter to the High Court under the provisions of section 317 of the Criminal Procedure Code. The question for the opinion of the High Court is whether the Legislature has by virtue of the wording of paragraph (b) of section 313 of the said Ordinance by necessary implication excluded *mens rea*. In other words that knowledge on the part of the registered owner is not an essential ingredient of the offence.

I At the hearing the learned Magistrate found as a fact that some time on or before the 26th